

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 291 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

KHARVA MOHAN ARJAN

Appearance:

1. Criminal Appeal No. 291 of 1987
MR KC SHAH, APP for Appellant
MR MJ BUDDHBHATTI for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/07/2004

1. The State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure [hereinafter referred to as 'Cr.P.C.'] to challenge the judgment and order of acquittal passed by the learned Addl. Sessions Judge, Porbandar in Sessions Case No. 33 of 1986 dated 13th January, 1987 acquitting both the respondents of the charge levelled against them of committing offences under Sections 302 and 114 of the Indian Penal Code [IPC] and also under Sections 37 (1) and 135 of the Bombay Police Act.

2. The case of the prosecution, in nutshell, can be stated as under :-

2.1. On 19th April, 1986 while the deceased was proceeding to have tea at Bal Mandir, opposite Subhashnagar in the city of Porbandar, the present respondents accosted him, respondent no. 2 caught the deceased, whereas respondent no. 1 inflicted knife blow on the stomach region. After causing this injury both the respondents ran away from the place. Maniben, wife of Mohanbhai Keshavbhai and sister of the deceased Lalji had witnessed this incident as she had gone near the road for throwing the garbage. She and her sister Dhaniben brought a towel from the house and tied it around the waist of the deceased and carried him to their father's place. They immediately fetched an auto rickshaw and placed the deceased in the rickshaw to remove him to the hospital. On way to the hospital, they saw one ambulance and shifted the deceased in the said ambulance and took him to the hospital. Upon examination by the Medical Officer on duty, he was declared dead. Maniben therefore, lodged the First Information Report with the police of Porbandar City "A" Division Police Station. The police, on receipt of the information, commenced the investigation and in the course of the same, arrested the respondents. They also recorded the statements of Maniben, Dhanuben and others, drew the relevant panchnamas, got the autopsy done and obtained the report of post mortem examination, etc. Upon completion of the investigation, charge-sheet was submitted against the respondents in the Court of the Learned Judicial Magistrate First Class, who in turn committed the case to the Court of Sessions, since offence under Section 302 of the IPC is exclusively triable by the Court of Sessions.

2.2. At the trial the Ld. Addl. Sessions Judge framed charge against the respondents at Exh. 3 on

21st October, 1986. The charge was in relation to the offences mentioned above. The respondents pleaded not guilty and claimed to be tried.

3. The prosecution, in support of its case, led evidence, oral as well as documentary. It examined 12 witnesses and produced documentary evidence such as the FIR, various panchnamas, the post mortem notes, etc. At the end of the recording of the evidence, further statements of the respondents were recorded under Section 313 of the Cr.P.C. and all the incriminating circumstances appearing against them in the evidence were put to them. It appears that their defence was that of general denial.

4. At the end of the trial, the learned trial Judge found that the prosecution had completely failed to establish its case against the respondents and acquitted the respondents vide judgment dated 13th January, 1987. Hence, this acquittal appeal.

5. Mr. KC Shah, Ld. APP appearing for the State has submitted that the judgment and order of acquittal passed by the learned trial Judge are erroneous because there is ample evidence on record to establish the guilt of the respondents. He has further submitted that considering the oral testimony of Bai Maniben and the other witnesses, it clearly appears that it was the respondents who had committed the crime. He has lastly submitted that this appeal is required to be allowed.

5.1. As against that, Mr. MJ Budhdhbbhatti, learned advocate appearing for the respondents has supported the judgment. According to him, the evidence of sole eye witness is very doubtful and it has been rightly discarded by the learned trial Judge. He has, therefore, submitted that this being acquittal appeal, the view taken by the learned trial Judge is just and proper and there is no need for this Court to interfere with the same.

6. We have carefully gone through the record of this case with a view to reappraise the evidence led by the prosecution and we have also carefully considered the submissions made by both the learned advocates.

7. It appears from the record that the deceased on the fateful day i.e. 19th April, 1986 received serious injury on the vital part of his body, namely stomach, as a result of which he expired. The questions that are to be decided by this Court are

whether the death is homicidal and if yes, who has caused it and what offence ?

7.1. First we will deal with the question whether it is a homicidal death. The prosecution, to establish this fact, has examined Dr. Manjibhai Khodabhai Makwana, P.W. 6 at Exh. 28. He has stated in his evidence that on 19th April, 1986 he was working as Medical Officer in Bhavsinhji Hospital at Porbandar. At about 5.20 p.m. body of the deceased was brought to the hospital for autopsy. He started examination at 6.30 p.m. and completed the same at 7.45 p.m. He had noticed an injury on the stomach of the body which has been adequately described in the post mortem notes prepared by him and which are produced at Exh. 16. Column no. 17 of the post mortem notes shows the following injuries :-

A stab wound just above umbilicus 1" to left side
of medium body line, size of 3" x 1/2" C sharp
everted margins from verse in direction
peritonium protruding out of the wound - Cavity
deep 5" deep profuse bleeding from wound present.

In the opinion of the Medical Officer, the death was due to shock as a result of severe internal haemorrhage by visceral injury. The witness has stated that the external injury was corresponding to internal injury, which had damaged the vital internal organ. He has further stated that the said injury could be caused by a weapon like Muddamal article knife. He has further stated that the injury was recent and the clothes of the deceased were smeared with blood. In the cross-examination by the defence, he has stated that a person receiving such injury is likely to die. He has further stated that the stomach was examined and nothing abnormal was found from it. He has further stated that if a person has eaten non-vegetarian food, it would take about 4 to 5 hours to digest. In the case of the deceased he did not find any semi-digested or undigested food in the esophagus, small intestine or the large intestine.

7.2. The aforesaid evidence of the Medical Officer shows that the deceased had died on account of the injury received by him on his stomach causing damage to the internal vital organ as well as excessive bleeding. Thus, evidence of this witness amply proves that it was a homicidal death. We, therefore, agree with the finding given on this issue by the learned trial Judge.

8. The vital question that is to be decided

is whether the respondents are the authors of this injury. To substantiate its case, the prosecution has examined Maniben, wife of Mohanbhai Keshabhai P.W. 1 at Exh. 8. She has stated in the examination-in-chief that she was staying with her husband in Subhashnagar locality. Her father Nathabhai Ramabhai was also staying in the same locality. The deceased was his brother. He was staying with their father. She has further stated that on the day of the incident her sister Dhanuben had come to meet her. It was around 1.00 p.m. Witness was doing household work. She collected the garbage from her house and went to throw it near the road. At that time she saw the deceased going to have a cup of tea. While she was throwing the garbage, she saw respondent no. 2 catching hold of the deceased and respondent no. 1 inflicting a blow with knife on the deceased on the left side of his stomach. She immediately went inside the house and brought a towel, which was tied around the waist of the injured. Her sister Dhanu was also there. Both the sisters thereafter carried the injured to the house of their father Nathabhai. She has further stated that a rickshaw was summoned for removing the injured to the hospital. On way to the hospital they could avail the services of ambulance and the injured was shifted from the rickshaw to the ambulance for taking him to the hospital. According to her, at the hospital, the doctor on duty examined him and declared that he had already died. She has further stated that the reason for the assault was that the deceased had married to the sister of respondent no. 1, namely Radha about 14 years prior to the day of incident. They had one daughter. Radha had later on deserted the deceased and the daughter was also staying with Radha. Since the deceased wanted to get married again, he had divorced Radha, but he had demanded the custody of the daughter which was not given to him. She has further stated that her brother was beaten by respondent no. 1 and one Bhimji Arjan. Because of this enmity the deceased was assaulted on the day of incident. In the cross-examination by the defence she has admitted that there were number of houses situated nearby the scene of offence. She has further stated that after Dhanu came to visit her, the incident took place within 15 minutes to half an hour. She has further stated that when she saw the assault on her brother, she had raised shouts and Dhanu had arrived there on hearing the shouts. She has further stated that she was first to reach near the deceased followed by Dhanu. She, however, did not tell anything to her. She has further admitted that though people had gathered there, she had not talked to any one how the incident took place. She has also stated in the cross-examination

that when she saw Lalji i.e. deceased for the first time on the road, she had not seen the respondents. She has further stated that after delivering one blow the respondents ran away from the place. Where they went she did not know. She has also stated that when she went near the injured, she saw the injured bleeding from the stomach, the throat and from the mouth. She went inside her house and brought towel. She has also stated that the injured was lying on the ground in a bleeding condition and the ground was also stained with blood. According to her, she had shown the place having blood to the police. She has further admitted that even when she and Dhanu went inside the house, she had not told Dhanu how the incident had taken place. She has further stated that she and Dhanu carried the injured Lalji to their father's place, at that time Lalji was profusely bleeding. She has further stated that they had lifted the injured Lalji with hands and in that way he was carried to the place of Nathabhai. She has, however, stated that neither her nor her sister's clothes were stained with blood. She further explains that the clothes were not stained with blood because the feet of the injured were tied. She has also admitted that the incident had taken place on the back side of the house of Karsan Arjan and this place could not be seen while standing near the entrance of the house of the witness. She has denied the suggestion that the false case has been filed against the respondents.

8.1. The prosecution has also examined Dhanuben Nathabhai, sister of Maniben. She is not an eye witness, but according to her she had reached the place immediately after the incident. In the examination-in-chief she speaks about the first marriage of the deceased with sister of respondent no. 1 and the subsequent divorce between the two and also the remarriage of the deceased. She also speaks about the previous quarrel that had taken place between respondent no. 1 and the deceased. This witness, however, has not stuck to her police statement completely and the learned Public Prosecutor had sought permission of the Court to ask certain questions to her which could be put to a witness in cross-examination. Ultimately the Prosecutor had put a suggestion to her that because of the compromise between the parties she was not telling the truth despite the fact that she had seen respondent no. 1 inflicting knife blow on the deceased. This suggestion has been denied. In the cross-examination she has stated that she was sitting on the Ota and she went to the scene of offence after the incident was over. It was only when her sister Maniben came and called her she had gone to

the place where the injured was lying.

8.2. The prosecution has examined Natha Rama P.W. 3 at Exh. 23, the father of the deceased. According to this witness, he was informed by Maniben about the incident when she and Dhanu had brought the injured Lalji to his house. She had stated that it was respondent no. 2 who had caught hold of the deceased whereas respondent no. 1 had inflicted the knife blow. He has further stated that he had telephoned for the ambulance, but in the meanwhile they had proceeded towards the hospital in a rickshaw. They got the ambulance on the way to the hospital and the injured was shifted to the hospital in the ambulance. He has also stated about the motive for the assault. In the cross-examination he had denied that he had not stated in the police statement that he had asked his daughter Mani how the incident had taken place. He has also denied the suggestion that he did not know who had caused injury to Lalji. Lastly he has stated that on the day of incident he had eaten Rotla and fish with rice.

8.3. P.W. 4 is Premaji Laghu Exh. 24. He is panch of the scene of offence. Neither in his evidence nor in the panchnama it is mentioned that earth was blood stained at the place of incident. In fact in the panchnama it is very categorically stated that even upon minute inspection of the place, no blood stains were found.

8.4. P.W. 5 - Yusufkhan Abdulrajak Pathan Exh. 26 is a panch witness of the clothes put on by the respondent no. 2 at the time of incident. He has not supported the prosecution and hence he has been declared hostile.

8.5. P.W. 7 - Yusuf Adremal Exh. 30 is the driver of the ambulance van. P.W. 8 Chandulal Mathurdas Exh. 32 is the panch of discovery of the weapon of the offence. He has, however, not supported the prosecution and he has been declared hostile. Similarly P.W. 9 Harish Liladhar Exh. 34 is also panch of the discovery of the Muddamal knife. He has turned hostile and not supported the prosecution. P.W. 11 - Harji Lakha is the P.S.O. Incharge of City Police Station, Porbandar on the date of incident. Lastly P.W. 12 - Himatsinh Mulubha Gohel Exh. 40 is the Investigating Officer. He speaks about course of investigation, discovery of clothes, offending weapon, etc. and the arrest of the accused. In the cross-examination certain contradictions in the evidence of the witnesses have been brought on record.

9. Thus, considering the nature of the aforesaid evidence, the evidence of Maniben is the most important evidence to connect the present respondents with the crime. If her evidence is scrutinised, it shows that it is very doubtful and full of discrepancies. According to her, when she went near the road, she had seen Lalji going for cup of tea. At the time when Lalji was lying on the ground in profusely bleeding condition she went home and she and her sister came there and lifted Lalji with hands. It is difficult to believe this story because though the injured was in a bleeding condition, the clothes of the witnesses have not been stained with blood. In fact even at the time of post mortem examination, the Medical Officer had found that the deceased was bleeding from the wound. If that be so, certainly the clothes, the hands and other parts of the body of the witnesses Maniben and her sister would have been stained with blood. That has not happened. Further the place at which the incident is alleged to have taken place is minutely examined by the police. It has, however, not found any stains of blood. This renders her evidence doubtful. Not only that but she has also admitted that while standing near the entrance of the house, the incident could not be seen because it had taken place behind the house of Karsan Arjanbhai. It is only with a view to overcome this difficulty, the witness seems to have stated that she had gone near the road to throw the garbage, but other surrounding circumstances render her evidence very doubtful. Her conduct at the time of incident is also not natural. After seeing the injured brother she immediately rushed home, at home her sister was sitting but she did not inform her anything about the incident. Secondly, even when people had gathered there, no-one was informed how the incident had taken place. Such conduct is highly improbable. It may be noted here that her sister Dhanu has not supported the prosecution, but she has also stated in her evidence that Maniben had not told her anything about the incident nor she had asked her as to how the incident had taken place. Apart from this, there is evidence on record that many persons had gathered there on hearing the shouts of Maniben. The prosecution has not examined a single independent witness to support its case though they were available.

9.1. It may also be noted here that according to the evidence of the father of the deceased Nathabhai, on the day of incident Lalji i.e. the deceased had taken his lunch and thereafter he had gone out. He has further stated that he (Nathabhai) had taken lunch consisting of

Rotla, fish and rice. It is quite possible that Lalji might have also consumed the same food. However, the post mortem examination shows that his stomach was absolutely empty; meaning thereby that the incident may not have taken place at the time when it is spoken of by the witnesses. Thus, considering the fact that at the place of the incident there were no blood stains though the Maniben had stated that the deceased had fallen down on the ground in a profusely bleeding condition and there was blood all over the ground and that there was no food found either semi-digested or undigested, there is no doubt in our mind that the prosecution witnesses are not telling the truth about the place and time of the incident. When that is so, the evidence of sole eye witness Maniben becomes vulnerable and unless there is independent reliable corroboration, it cannot be accepted. As stated above, no such independent evidence is available. In view of the aforesaid, the findings arrived at by the trial Court appear to be reasonable. Since this is an acquittal appeal, we cannot interfere with the findings of the trial Court if we find that the view taken by the trial Court is reasonable and probable. In the present case, it is so. There is, therefore, no reason for us to interfere with the order of acquittal. This appeal has no merit, it fails and it is hereby ordered to be dismissed.

Muddamal articles to be disposed of in accordance with the direction of the trial Court. Bail bonds shall stand cancelled.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.